

Chapter 41 – Scheme closure

The decision to close the scheme

- 41.1 On 4 February Mr Stewart delivered the final draft of the closure submission to Minister Bell advising, as noted earlier, that the closure/suspension of the scheme and the associated DEL budgetary risk could qualify for the Urgent Procedure. The submission also noted that the intention was to lay the draft regulations to effect scheme closure, and table the relevant motion for Assembly approval of those regulations, at the earliest possible juncture without prior consideration and approval by the ETI Committee.²¹⁴⁷
- 41.2 The closure submission was duly signed off by the Minister and submitted to OFMDFM on Friday 5 February.²¹⁴⁸ An indication was received on the same date at about 5.25pm that the paper had been approved by OFMDFM which, pursuant to the Urgent Procedure, provided Executive authority for the Minister’s decision.
- 41.3 DETI then issued a press release, signed by Minister Bell, confirming that the scheme would close at the earliest possible juncture, indicating that the draft regulations had been laid and the Assembly Business Committee would be asked to schedule the necessary debate for 15 February.²¹⁴⁹ That press release was to stimulate widespread dissatisfaction on behalf of potential applicants to the scheme, as well as those involved commercially in the renewable heat industry, and their Assembly representatives over the weekend.

Decision to provide further time in light of the adverse reaction

- 41.4 On the following Tuesday, Sir Malcolm McKibbin met with the First Minister and deputy First Minister and it appears that the view was then taken that the scheme should be left open until a date to be determined to allow for the “completion of applications already in process (to be further defined).”²¹⁵⁰
- 41.5 Later in the afternoon of 9 February a meeting of the Assembly’s ETI Committee took place. Mr McGlone MLA chaired the meeting, which was attended by, amongst others, Conor Murphy MLA, Máirtín Ó Muilleoir MLA, Dr McCormick, Mr Stewart, Mr Mills and Mr Wightman.²¹⁵¹ The case for the proposed early suspension of the scheme was presented by Dr McCormick, who displayed a graph demonstrating the substantial surge in applications prior to the passage of the 2015 amending legislation in November. He pointed out that in that period of six weeks there had been some 900 applications, which almost equalled the number of applications that had been made from the introduction of the scheme in 2012 up to that point. He explained that such a development had to be seen in the context of an overall reduction in the funding available and confirmation by HMT that, for the financial year 2016-17 and thereafter, any overspending on the NI RHI scheme would have to be repaid out of the block grant. He forecast that the RHI expenditure for 2015-16 would be in the region of £30 million and estimated spend for 2016-17 would be in the region of £45 million. On that basis Dr McCormick thought

2147 TEO-02368 to TEO-02378

2148 TEO-00049 to TEO-00053

2149 TEO-03453; TRA-12521 to TRA-12522; DFE-226514 to DFE-226516

2150 TEO-00191

2151 WIT-134295 to WIT-134299

that the impact on the block grant could be in the region of £27 million to £33 million. He also informed the Committee that allegations of scheme abuse had been made and required to be investigated.²¹⁵²

- 41.6 The Committee was very critical of the announcement of the proposed suspension by the Minister late on a Friday afternoon and confirmed that, since the announcement, a flood of emails had been received from individuals and organisations complaining that loans had been taken out and equipment ordered on the assumption that the scheme would continue; and drawing attention to the fact that regulation 10 of the amending regulations of November 2015 had provided for the continuation of the amended tariffs until at least 31 March 2016.²¹⁵³ Mr Stewart confirmed that the Department had received similar representations, which the Minister had taken into account but weighed against the very substantial risk to the NI block expenditure.²¹⁵⁴
- 41.7 Mr Stewart does not seem to have drawn attention to the information received by Energy Efficiency Branch in January that Moy Park had instructed suppliers that the RHI scheme would close to new applicants at the end of March and that there was a need to ensure speed with applications.²¹⁵⁵ Mr Stewart told the Inquiry that that information had both surprised and dismayed him and Mr Mills.²¹⁵⁶
- 41.8 The Inquiry notes that, during the course of the meeting, Mr Mills again stated (erroneously) that the Minister had decided to prioritise the introduction of the domestic scheme over cost control for both schemes, adding that at that point:
- “The Northern Ireland scheme was under performing and therefore we were not using up what you might say was free money in terms of AME.”²¹⁵⁷
- 41.9 In answer to a question from the ETI Committee Chair as to whether Ofgem had ever suggested some sort of demand-led management or control, Dr McCormick said that would not have been part of their remit and that he did not think that had ever happened. That did not provide the Committee with the full picture since, as discussed earlier in this Report, Ofgem had in fact advised DETI in June 2012 to copy the budget controls due to be implemented in the GB RHI scheme in July 2012 – although the Inquiry notes that there is nothing to suggest that Dr McCormick would have been aware of that information at the time of his Committee appearance.²¹⁵⁸

Decision to postpone closure by two weeks

- 41.10 A postponement of the closure of the scheme for two weeks to 29 February was subsequently reached by “collective agreement”.²¹⁵⁹ That agreement seems to have been reached as a compromise with MLAs whose constituents were making impassioned representations as to the adverse financial consequences that closure would be likely to bring.

2152 WIT-10727 to WIT-10729

2153 WIT-10730 to WIT-10731

2154 WIT-10732

2155 IND-05881

2156 TRA-11828

2157 WIT-10749

2158 WIT-10757

2159 DFE-293257

- 41.11 Some witnesses, including Mr Cairns, Minister Foster, and to an extent Mr Johnston, referred to the postponement of scheme closure as the ‘price’ that the DUP would have to pay for Sinn Féin support for the necessary regulations, without which Assembly approval could not be obtained as every other political party opposed scheme closure at that point.²¹⁶⁰ Other witnesses did not support the reference to such a ‘price’. For his part, Sir Malcolm McKibbin believed there was a consensus from both parties to keep the scheme open for a “short period”.²¹⁶¹
- 41.12 Significantly, it does not appear that any cost estimate or financial analysis was provided at the time when this decision was taken of the potential cost of the two-week extension, as had been the case with the figures quoted in response to Minister Foster’s enquiry about a possible delay to the introduction of the tiered scheme in November 2015.²¹⁶² Nor does any attempt appear to have been made to provide any monetary estimate of the likely impact upon participants with significant financial commitments, jobs lost, cost to businesses, etc.
- 41.13 Subsequent investigation by the RHI Taskforce within DfE has revealed to the Inquiry that a further spike of 298 applications took place during the two week extension, of which some 280 were entitled to the medium biomass tariff in accordance with the 2015 amendment regulations. That gave rise to an additional expenditure of approximately £7.8 million to the end of March 2018 and totalled about £91.5 million over the 20 years of accreditations.²¹⁶³ It is of course accepted that such detail would not have been available when the decision to extend the period for two further weeks was made and the figures referred to above take no account of the impact of the amendment regulations passed in 2018. However, some further enquiry into the likely cost of accreditations secured within that two week period could certainly have been undertaken.

The suspension of the scheme from 29 February 2016

- 41.14 The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016 were made on 16 February 2016 and came into operation on the following day in accordance with regulation 1. Regulation 4 afforded DETI the power to issue a notice of suspension of the non-domestic NI RHI scheme when it did not have or was not likely to have sufficient funds available to it to meet the total costs of payments under the schemes. A similar power was provided in respect of the domestic scheme.²¹⁶⁴ A Notice of Suspension of both schemes was then issued to take effect from 29 February 2016.²¹⁶⁵ As it happens, at the time of writing, the scheme has never been re-opened to further applications.

2160 TRA-13261; TRA-13721 to TRA-13722; TRA-12967; TRA-14808 to TRA-14809

2161 TRA-16759 to TRA-16765

2162 TRA-13731 to TRA-13732

2163 WIT-23970

2164 LEG-00102 to LEG-00105

2165 DFE-128339 to DFE-128340

Findings

- 218.** After a decision had initially been made to close the NI RHI scheme to new applications as expeditiously as possible, a two week reprieve was provided. This was the result of a DUP and SF consensus and appears to have been motivated by a concern on the part of both parties about the need to be fair and about the risk of legal challenge to closure following a large number of representations received from persons who were planning to install renewable heat systems, some of whom had already paid for those systems. The 2016 regulations permitting scheme suspension were, in fact, opposed by many of the other parties in the Assembly at that time for similar reasons.
- 219.** The financial impact of the two week reprieve was not assessed at the time. However, even if it had been, the cost was something that had to be weighed in the balance in assessing the risk of legal challenge if the scheme was closed too abruptly. Any such challenge, if successful, might have led to the scheme remaining open for much longer.
- 220.** The initial decision to seek to close the scheme as expeditiously as possible was understandable in light of the financial risks which were then apparent. The later two-week delay in closure still resulted in an earlier closure of the scheme than if consultation and standard Assembly procedures had been followed before scheme closure, albeit it permitted a further significant spike in applications before scheme suspension.
- 221.** The Inquiry considers that the decision eventually reached to grant the two week reprieve was within the reasonable range of responses available to the Executive at the time, in light of the risk of legal challenge and strong public opposition to the decision to suspend the scheme.
- 222.** For reasons addressed earlier in this Report, DETI should not have found itself in the position where an urgent suspension of the scheme required further legislation.